

Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
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Wilmington, Delaware 19801-3733
Telephone (302) 255-0665

Date Submitted: December 12, 2005

Date Decided: February 22, 2006

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RE: State of Delaware v. Tyriek Rogers
ID# 0508019971

Dear Counsel:

On August 23, 2005, members of the Delaware State Police Special Investigations Unit received information from a confidential information ("CI") that a black male known as "T" would be delivering a large quantity of cocaine to an unidentified individual in the parking lot of a Wawa store in Salem village Square in Newark, Delaware. The CI told the police that "T" would be driving a green Chrysler van with a Delaware temporary tag.

The police officers set up surveillance of the parking lot with the CI present. The officers observed a green Chrysler van with a temporary tag in the parking lot, and then saw a black male eating a sandwich and drinking a soda exit the Wawa and approach the green Chrysler van. The CI identified the black male as the person he knew as "T". The officers immediately approached Mr. Rogers, detained and searched him, and seized from his person a quantity of what is alleged to be cocaine, a handgun, and \$1,737.00 in cash,.

Mr. Rogers has been indicted on charges of Trafficking in Cocaine, Possession With Intent to Deliver Cocaine, Possession of a Firearm During the Commission of a Felony, and Possession of a Deadly Weapon by a Person Prohibited. He has filed a Motion to Suppress, arguing there was insufficient probable cause for his arrest.

Although the State's discovery indicated that a CI told the police that the defendant was going to be selling cocaine in the Wawa parking lot shortly, and the CI provided a description of the defendant and his vehicle, the State never disclosed during discovery that the CI was to be the buyer in that transaction, nor did the State disclose a supplemental police report which revealed that the CI and defendant had two phone conversations before the alleged transaction was to occur and the substance of those conversations.

Moreover, although the State's discovery indicated defendant refused to give a statement after his arrest, the State disclosed the day before the suppression hearing that the defendant did make a statement concerning the gun found in his possession, and that the defendant's interview was videotaped. Because of the State's violation of Superior Court Criminal Rule 16, the defendant only learned of the existence of the videotaped statement the day before the suppression hearing.

The Court finds that the State's discovery responses were incomplete and misleading. The State failed to disclose: (1) that the CI was the proposed buyer, (2) the number and substance of the phone calls between the CI and defendant, (3) that the defendant did not (as represented in discovery) invoke his *Miranda* rights, but rather, waived them and gave an incriminating statement, and (4) the existence of a videotape of the defendant's statement. Given the number and nature of the discovery violations, the appropriate sanction is exclusion of the supplemental report authored by Detective Clemmons, the defendant's statement, and the videotape of defendant's statement.

The Court denies the Motion to Suppress all the other evidence because, based on the totality of the circumstances, it finds there was probable cause for the arrest.

In so holding, the Court notes that the State has an obligation to insure the defendant receives a fair and impartial trial.¹

The defendant's right to a fair trial is jeopardized when the State violates Rule 16. Fortunately, in this instance, the discovery violations came to light well before trial. Nevertheless, the "no harm, no foul" argument offered by the State in this case runs afoul of the letter and spirit of Rule 16 and does not promote the interests of justice.

IT IS SO ORDERED.

Very truly yours,

Jan R. Jurden
Judge

JRJ:mls

¹ *Brokenbrough v. State*, 522 A.2d 851, 855 (Del. 1987); *Hooks v. State*, 416 A. 2d 189, 204-08 (Del. 1980).

cc: Prothonotary